IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 719 OF 1989

Dadu Genu More]
age 55 years, at present in]
Yerawada Central Prison, Pune]..Appellant
(Ori.Accused)

versus

State of Maharashtra]
(at the instance of R.C.F.]
Police Station]..Respondents

Mr. Pritam Runawala, Advocate appointed for the Appellant - Original accused.

Mr. P. S. Hingorani, APP for the Respondents - State.

CORAM : D. G. DESHPANDE, &
S. R. SATHE, JJ.

DATE : 17TH JANUARY, 2007.

ORAL JUDGMENT : (Per. D. G. DESHPANDE, J.) :

1. Heard Advocate appointed for the Appellant - original accused and learned APP for the State.

2. The incident is of 29.1.1987. The accused is the husband of deceased Ranjana who has been convicted for burning his wife Ranjana. The accused and Ranjana were married 8-9 years before the

incident. They had three children. They were living in a zopadpatti in a hut made of a bamboo and other combustible material. It is the case of the prosecution that on the date of the incident, the accuse came home in a drunken condition. He wanted to take dinner. Wife was feeding the child. She therefore asked him to wait. He got irritated. He brought kerosene lamp, poured kerosene on the saree towards legs of Ranjana. She questioned him and asked him why he is making a Tamasha. Thereupon he took the burning glass lamp and set her ablaze. This is the story of the prosecution. Two dying declarations were recorded, one by the Police Officer and the other by Special Executive Magistrate in the hospital. The court relied upon both the dying declarations and the evidence of father of Ranjana who was sleeping at the time in front of the house of Ranjana and the court convicted the appellant - accused, as stated above, and, hence this Appeal.

3. Mainly two contentions were raised by the advocate for the appellant - accused. Firstly, that both the dying declarations could not be relied upon because the prosecution did not bring on record

anything to show that any doctor examined Ranjana before the SEM and the police officer, who recorded her statement. We were taken through the record. P.W. 8 Dr. Nitin Jagannath Mokal, the doctor who examined Ranjana after her burns and who recorded case history of accidental burns, details not known. He however does not state anything that either the police officer or the SEM approached before recording the dying declaration or that he had any opportunity or occasion to examine Ranjana with reference to her state, mental as well as physical to give a dying declaration.

4. It is pertinent to note that Ranjana has suffered more than 91% burn injuries. On both her dying declarations allegedly recorded by the SEM as well as Police Officer, there are endorsements of the said doctor but those endorsements are not at all proved. The doctor was not confronted with those endorsements by the Prosecutor. On her own accord doctor did not state anything about it nor the prosecutor tried to elicit from his mouth that he examined Ranjana on two occasions for the purpose of two dying declarations.

5. It is a mandate of law that before or at the time of dying declaration in such cases is recorded. The person recording should obtain a certificate from the doctor about the ability and fitness of the patient to give dying declaration. This requirement of law has not at all been fulfilled in the present case, apparently due to total negligence of the prosecutor. Therefore, the dying declarations according to the Advocate for the accused cannot be and could not have been relied upon.

6. The other important aspect of the matter, that is brought to our notice by the Advocate for the accused is that the accused sustained injuries to his hands in his attempt to extinguish the fire. But the investigating agency suppressed this fact from the court and did not refer the accused to the doctor, and, when the accused was produced before the Magistrate, he had to apply to the Magistrate for sending him for medical examination. His application is on record page 118 of the paper book and that application was allowed by the court. But even thereafter also the investigating agency did not care to produce those documents on record. The investigating agency cannot suppress facts, which

are apparently beneficial to the accused, and it cannot try to seek conviction of the accused in such manner.

7. The trial court relied upon the evidence of the father of Ranjana, but he is contradicted on material particulars by a neighbour P.W. 3 Mrs. Malan Bansi Nikalje. According to father of Ranjana, accused inspite of the hut being on fire and inspite of Ranjana being set on fire, did nothing but was sitting there silently. This is totally contradicted by this witness P.W. 3. She has stated that it was the accused who brought the children from the hut, it was the accused who went and brought auto-ricksaw to take Ranjana. Therefore, evidence of father has to be rejected.

8. In these circumstances, there is no eye witness and when most of the witnesses turned hostile and when dying declarations cannot be relied upon for the reasons stated above and the evidence of the father becomes highly doubtful, the prosecution case does not inspire confidence at all. It may be that accused might have committed this act. But there is a difference between "may be" and

"must be", therefore, the appeal of the accused is required to be allowed. In the result, we pass the following order:

ORDER

. Appeal is allowed. His conviction and sentence is set aside. He is acquitted of the offences charged. His bail bond stands cancelled. NBW issued against the accused stands cancelled.

. Fee of the Advocate appointed is quantified at Rs.500/- (Rupees Five Hundred).

(D.G. DESHPANDE, J.)

(S. R. SATHE, J.)